



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2019-0156; FRL-8697-02-R4]

Air Plan Approval; FL, GA, NC, SC;

Interstate Transport (Prongs 1 and 2) for the 2015 8-Hour Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) is approving State Implementation Plan (SIP) submissions from Florida, Georgia, North Carolina, and South Carolina, addressing the Clean Air Act (CAA or Act) Good Neighbor interstate transport infrastructure SIP requirements for the 2015 8-hour ozone National Ambient Air Quality Standard (NAAQS or standards). EPA has determined that each state's SIP contains adequate provisions to prohibit emissions that will significantly contribute to nonattainment or interfere with maintenance of the 2015 ozone NAAQS in any other state. This action is being taken in accordance with the CAA.

DATES: This rule is effective [Insert date 30 days after date of publication in the **FEDERAL REGISTER**].

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2019-0156. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division,

U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

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SUPPLEMENTARY INFORMATION:

I. Background

On December 30, 2019, EPA proposed to approve SIP submissions from Alabama, Florida, Georgia, North Carolina, South Carolina, and Tennessee¹ as meeting the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I), or the Good Neighbor provision, for the 2015 8-hour ozone NAAQS. *See* 84 FR 71854. Specifically, the 2019 notice of proposed rulemaking (NPRM) originally proposed to find that emissions from sources in these states will not significantly contribute to nonattainment or interfere with maintenance of the 2015 8-hour ozone NAAQS in any other state based on information for the analytic year 2023, consistent with the 2024 Moderate area attainment date. Refer to the December 30, 2019 NPRM for an explanation of the CAA requirements, the four-step framework that EPA applies under the Good Neighbor provision for ozone NAAQS, a detailed summary of the state submissions, and EPA's

¹ The submittals from these six southeastern states were submitted separately under the following cover letters: Alabama Department of Environmental Management dated August 20, 2018 (received by EPA on August 27, 2018); Florida Department of Environmental Protection dated September 18, 2018 (received by EPA on September 26, 2018); Georgia Environmental Protection Division dated September 19, 2018 (received by EPA on September 24, 2018); North Carolina Department of Environmental Quality dated September 27, 2018 (received by EPA October 10, 2018); South Carolina Department of Health and Environmental Control dated and received by EPA on September 7, 2018; and Tennessee Department of Environment and Conservation dated September 13, 2018 (received by EPA on September 17, 2018).

proposed rationale for approval. *See* 84 FR 71854. The public comment period for the December 30, 2019, NPRM closed on January 29, 2020.²

Subsequent to the publication of the NPRM on December 30, 2019, two events caused EPA to adjust its analysis of the aforementioned SIP submissions. First, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) issued its ruling in *Maryland v. EPA*, 958 F.3d 1185 (D.C. Cir. 2020) (*Maryland*), which held that EPA must address Good Neighbor obligations consistent with the 2021 attainment date for downwind areas classified as being in Marginal nonattainment under the 2015 8-hour ozone NAAQS, “not at some later date.” 958 F.3d at 1203-04 (citing *Wisconsin v. EPA*, 938 F.3d 303, 314 (D.C. Cir. 2019) (*Wisconsin*)).³ Second, on October 30, 2020, EPA released and accepted public comment on updated 2023 modeling that used the 2016 emissions platform developed under the EPA/Multi-Jurisdictional Organization (MJO)/state collaborative project as the primary source for the base year and future year emissions data. On April 30, 2021, EPA published the final Revised Cross-State Air Pollution Rule (CSAPR) Update for the 2008 ozone NAAQS (Revised CSAPR Update) using the same modeling that was made publicly available in the proposed rulemaking for the Revised CSAPR Update.⁴ Although that modeling focused on the year 2023, EPA conducted an

² On March 24, 2020, former EPA Region 4 Administrator Mary Walker signed a document (hereinafter referred to as the March 24, 2020 document) that EPA had intended to become a final rule upon publication in the *Federal Register*. However, the March 24, 2020 document was never published in the *Federal Register*. Further, on January 19, 2021, former EPA Region 4 Administrator Mary Walker signed a second document (hereinafter referred to as the January 19, 2021 document) that EPA had intended to become a final rule, which EPA posted to its website at <https://www.epa.gov/air-quality-implementation-plans/epas-approval-2015-8-hour-ozone-interstate-transport-requirements>. EPA noted in that posting “Notwithstanding the fact that the EPA is posting a pre-publication version, the final rule will not be promulgated until published in the Federal Register.” EPA will not publish either the March 24, 2020 document or the January 19, 2021 document in the *Federal Register*, and now intends that this notice constitutes final action with respect to the 2019 proposal, superseding all versions of previous draft final action documents.

³ *Maryland* involved EPA’s denial of administrative petitions filed by the states of Maryland and Delaware under CAA section 126(b), seeking to have EPA impose emissions limits on sources in upwind states alleged to be emitting in violation of the Good Neighbor Provision. The court disagreed with EPA that use of a 2023 analytic year, consistent with the 2024 attainment date for areas classified as being in Moderate nonattainment, was a proper reading of the court’s earlier decision in *Wisconsin*. *Id.* at 1204.

⁴ *Revised Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS*, 86 FR 23054; *see also* Emissions Modeling TSD titled “Preparation of Emissions Inventories for the 2016v1 North American Emissions Modeling Platform.” This TSD is available in the docket for this action and at <https://www.epa.gov/air-emissionsmodeling/2016v1-platform>. The underlying modeling files are available on data drives in the Docket office for public review. *See* the docket for the Revised CSAPR Update (EPA-HQ-OAR-2020-0272). *See also Air Quality Modeling Data Drives Final RCU.pdf*, available in the docket for this action for a file inventory and instructions on how to access the modeling files.

interpolation analysis of these modeling results to generate air quality and contribution values for the 2021 analytic year, consistent with the *Maryland* holding, as the relevant analytic year for the 2015 8-hour ozone NAAQS.

As a result, EPA issued a supplemental notice of proposed rulemaking (SNPRM) on July 19, 2021, which relied on the new modeling and analysis to supplement EPA's proposed finding in the December 30, 2019 NPRM that emissions from sources in Florida, Georgia, North Carolina, and South Carolina will not significantly contribute to nonattainment or interfere with maintenance of the 2015 8-hour ozone NAAQS in any other state.⁵ *See* 86 FR 37942. The new modeling and analysis indicated that Florida, Georgia, North Carolina, and South Carolina, individually, will not contribute greater than one percent of the 2015 8-hour ozone NAAQS to any potential nonattainment or maintenance receptors in 2021. In addition, EPA analyzed past and projected emissions of ozone precursors (nitrogen oxides (NO_x) and volatile organic compounds (VOCs)), finding a downward trend in emissions to support the modeling analysis and indicate that the contributions from emissions from sources in Florida, Georgia, North Carolina, and South Carolina to ozone receptors in downwind states will continue to decline and remain below one percent of the 2015 8-hour ozone NAAQS. Thus, the July 19, 2021 SNPRM provided that "EPA continues to propose to approve the interstate transport portions of the infrastructure SIP submissions from Florida, Georgia, North Carolina, and South Carolina as meeting CAA section 110(a)(2)(D)(i)(I) requirements for the 2015 8-hour ozone NAAQS." *See* 86 FR 37942.

The technical rationale for EPA's proposed action is given in the July 19, 2021 SNPRM and in supportive materials contained in the docket for this action. The comment period for the July 19, 2021 SNPRM closed on August 18, 2021, and EPA received no additional comments.

⁵ EPA previously proposed to approve infrastructure SIP elements submitted to fulfill the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) for the states of Alabama and Tennessee for the 2015 8-hour ozone NAAQS in the December 30, 2019, NPRM referenced previously in this rule. However, the July 19, 2021 SNPRM did not address these submissions, and EPA is deferring action on the referenced SIP submissions from Alabama and Tennessee at this time.

However, EPA did receive comments on the original December 30, 2019 NPRM, and relevant responses are provided in section II. EPA is finalizing the approval of this action based on the technical rationale presented in the July 19, 2021 SNPRM and in accordance with the CAA.

II. Response to Comments

EPA received four sets of adverse comments and one set of supportive comments on the December 30, 2019, NPRM. The comments were submitted by the Midwest Ozone Group, Sierra Club, New Jersey Department of Environmental Protection, New York State Department of Environmental Conservation, and one anonymous commenter. The full set of comments is provided in the docket for this final rule. This section contains summaries of the comments and EPA's responses.

Comment 1: Several commenters asserted that EPA's December 30, 2019 NPRM improperly focused on the analytic year of 2023, which the commenters argue ignores the August 2021 attainment date faced by Marginal 2015 ozone nonattainment areas. These commenters asserted that EPA's decision focused on 2023 (consistent with the August 2024 attainment date for Moderate nonattainment areas under the 2015 8-hour ozone NAAQS, rather than the August 2021 attainment date for Marginal nonattainment areas), which contravenes the statutory text and the *Wisconsin* decision, and is arbitrary and capricious. The commenters specifically mention that the distinction EPA has drawn between Marginal and Moderate areas is misleading, that it is unreasonable for EPA to expect downwind areas to voluntarily request reclassifications to Moderate, and that EPA has not provided adequate support for its assumption that Marginal areas will achieve attainment by 2021. A commenter also contended that the CSAPR Update is insufficient to bring all downwind states into attainment with the 2015 8-hour ozone NAAQS, citing a conclusion made in the December 30, 2019, NPRM in support of a 2023 analytic year and monitoring data from the 2017 ozone season indicating certain 8-hour daily maximum concentrations at air quality monitors in Delaware were above the level of the

NAAQS. In addition, a commenter asserted that recent monitoring data at other monitoring sites suggests that these areas will continue to have difficulty attaining the NAAQS in 2021.

Response 1: The comments related to the 2023 analytic year refer to a D.C. Circuit court decision addressing, in part, the issue of the relevant analytic year for the purposes of evaluating interstate ozone transport under the Good Neighbor provision. On September 13, 2019, the D.C. Circuit issued the *Wisconsin* decision, remanding the CSAPR Update (81 FR 74504, October 26, 2016) to the extent that it failed to require upwind states to eliminate their significant contribution no later than the next applicable attainment date by which downwind states must come into compliance with the NAAQS, as established under CAA section 181(a). *See* 938 F.3d 303, 313. In the December 30, 2019 NPRM, EPA had interpreted that holding as limited to the attainment dates for Moderate nonattainment area or higher classifications under CAA section 181 on the basis that Marginal nonattainment areas have reduced planning requirements and other considerations. *See* 84 FR 71854, 71856-58.

On May 19, 2020, however, the D.C. Circuit issued the *Maryland* decision that cited the *Wisconsin* decision in holding that EPA must assess the impact of interstate transport on air quality at the next downwind attainment date, including Marginal area attainment dates, in evaluating the basis for EPA's denial of a petition under CAA section 126(b). *See* 958 F.3d 1185, 1203-04. The court noted that "section 126(b) incorporates the Good Neighbor Provision," and therefore "the EPA must find a violation [of section 126] if an upwind source will significantly contribute to downwind nonattainment at the next downwind attainment deadline. Therefore, the EPA must evaluate downwind air quality at that deadline, not at some later date." *Id.* at 1204 (emphasis added). EPA interprets the court's holding in *Maryland* as requiring the Agency, under the Good Neighbor provision, to address Good Neighbor obligations by no later than the next applicable attainment date for downwind areas, including a Marginal

area attainment date under section 181 for ozone nonattainment.⁶

The December 30, 2019 NPRM proposing approval of the 2015 8-hour ozone Good Neighbor SIPs for Florida, Georgia, North Carolina, and South Carolina on the basis of a 2023 analytic year analysis predates the D.C. Circuit's decisions in *Wisconsin* and *Maryland*. In the July 19, 2021 SNPRM, EPA explained why it now considers 2021 to be the relevant analytic year for the purposes of determining whether sources in Florida, Georgia, North Carolina, and South Carolina will significantly contribute to downwind nonattainment or interfere with maintenance of the 2015 8-hour ozone NAAQS in any other state. *See* 86 FR 37944. Also in the July 19, 2021 SNPRM, EPA conducted an additional analysis for the year 2021, and provided additional notice and opportunity for public comment. *Id.* Thus, comments regarding the improper use of 2023 as a model year are now moot.⁷

Multiple commenters stated that the approach for identifying nonattainment and maintenance receptors in the original December 30, 2019 NPRM failed to identify all of the potential receptors relevant in a 2021 analytic year. In addition to their objections to EPA's selection of the 2023 analytic year, these commenters argued that measured design values at certain monitoring sites made clear that certain areas would not be able to attain the 2015 8-hour ozone NAAQS by the 2021 Marginal area attainment date. The shift in the July 19, 2021 SNPRM and this final action to a 2021 analytic year partially addresses the concerns raised by these commenters. To the extent commenters are arguing that EPA's method of defining nonattainment and maintenance receptors for Good Neighbor purposes ignores certain areas that

⁶ EPA notes that the court in *Maryland* did not have occasion to evaluate circumstances in which EPA may determine that an upwind linkage to a downwind air quality problem exists at steps 1 and 2 of the four-step interstate transport framework by a particular attainment date, but for reasons of impossibility or profound uncertainty the Agency is unable to mandate upwind pollution controls by that date. *See Wisconsin*, 938 F.3d at 320. The D.C. Circuit noted in *Wisconsin* that upon a sufficient showing, these circumstances may warrant a certain degree of flexibility in effectuating the implementation of the Good Neighbor provision. Such circumstances are not at issue in the present action.

⁷ EPA recognizes that this action is now being finalized after the Marginal area attainment date has passed and after the close of the 2021 ozone season. However, this does not change EPA's analysis or its conclusion. The modeling information available in the record and included in the supplemental proposal also indicates that these four states will not be linked to any downwind nonattainment or maintenance receptors in 2023 and 2028, confirming that no new linkages to downwind receptors are projected in later years.

may have air quality problems in 2021 based solely on historical measured data, EPA disagrees with these comments. EPA's method of defining these receptors, as described in section II of the SNPRM takes into account both measured data and reasonable projections based on modeling analysis.⁸

Regarding the contention that the CSAPR Update, which covered the 2008 8-hour ozone NAAQS, will not be sufficient to bring areas into attainment of the 2008 or 2015 8-hour ozone NAAQS, this is not relevant to the analysis in support of this action. Whether downwind states may or may not reach attainment of the 2015 8-hour ozone NAAQS with the assistance of the upwind state emissions reductions resulting from the CSAPR Update is not determinative of whether Florida, Georgia, North Carolina, and South Carolina have Good Neighbor obligations for the 2015 8-hour ozone NAAQS pursuant to the CAA. At issue is whether Florida, Georgia, North Carolina, and South Carolina will significantly contribute to downwind nonattainment or interfere with maintenance of the 2015 8-hour ozone NAAQS in any other state. The updated information presented in the SNPRM made clear that they will not, and no party commented on that updated information.

Comment 2: Several commenters call into question certain assumptions used in EPA's 2023 air quality modeling described in the March 2018 memorandum. A number of commenters contend that EPA's modeling was flawed because it relied on "unenforceable emissions limitations," including assumptions that power plants equipped with selective catalytic reduction (SCR) controls would emit at or below 0.10 pounds per one million British Thermal Units (lb/mmBtu) beginning in 2017. One commenter contended that many plants emit above that

⁸ Further, as recognized by the court in *Wisconsin*, 938 F.3d at 320, nonattainment areas that measure clean data in a given year, even if not sufficient to be redesignated to attainment based on the three-year design value, may qualify for up to two one-year extensions of their attainment dates, as provided at CAA section 181(a)(5). Thus, simply providing the value that would be needed in 2020 in order for an area to be designated to attainment using the three-year average, as some commenters did, does not present a complete picture of the likelihood that an area will be "reclassified" or "bumped-up."

rate. Another commenter asserts that EPA should not approve any prong 1 and 2 SIPs⁹ that reflect “EPA’s flawed data showing attainment by 2023.”

Response 2: As discussed previously and in the SNPRM, EPA is relying on updated modeling and analysis based on the 2021 analytic year and not the 2023 air quality modeling described in the March 2018 memorandum. However, EPA disagrees that its assessment of air quality and contributions at step 1 and 2 of the four-step interstate transport framework is flawed because it relies on unenforceable emission assumptions for electric generating units (EGUs) or that those assumptions are otherwise unrealistic. As an initial matter, in this context it is appropriate for EPA to focus on actual EGU emission projections, rather than modeling only enforceable limits (sometimes referred to as “allowable” emissions). EPA has previously explained that its analysis at steps 1 and 2 of the four-step interstate transport framework is appropriately focused on a projection of *actual* air quality concentrations and upwind-state contributions. As EPA explained in the final CSAPR Close-out, this approach to conducting future-year modeling in the Good Neighbor analysis to identify downwind air quality problems and linked states is consistent with the use of current measured data in the designations process under section 107 of the CAA. *See* 83 FR 65878, 65887-88 (December 21, 2018).¹⁰ In both cases, the purpose is to determine whether there is an actual air quality problem that needs to be further addressed (in the designations context, whether an area is in nonattainment of a NAAQS; in the Good Neighbor context, whether there are expected future air quality problems (i.e., downwind nonattainment or maintenance receptors) and upwind state contribution to these downwind nonattainment or maintenance receptors that require further analysis at steps 3 and 4). EPA’s future-year air quality projections reflect a variety of factors, including current emissions data, on-the-books control measures, economic market influences, and meteorology. Like the

⁹ Section 110(a)(2)(D)(i)(I) requires SIPs to contain adequate provisions that prohibit any source or other types of emissions activity in one state from contributing significantly to nonattainment of the NAAQS in another state (prong 1) and from interfering with maintenance of the NAAQS in another state (prong 2).

¹⁰ The CSAPR Close-out was vacated on grounds unrelated to this issue. *See New York v. EPA*, 781 F. App’x. 4 (D.C. Cir. 2019).

factors that affect measured ozone concentrations used in the designations process, not all of the factors influencing EPA's modeling projections are or can be subject to enforceable limitations on emissions or ozone concentrations. However, EPA believes that consideration of these factors contributes to a reasonable estimate of anticipated future ozone concentrations and contributions at steps 1 and 2 of the four-step interstate transport framework. In short, EPA's consideration of these factors — even when not based on or amendable to enforceable limits or controls — in its future-year modeling projections used at steps 1 and 2 of the Good Neighbor analysis is reasonable. *See* 83 FR at 65888 (December 21, 2018). Only where such analysis indicates an upwind-state linkage under projected conditions does further analysis proceed at steps 3 and 4 of the four-step interstate transport framework to determine what enforceable emissions limits should be required in the linked upwind state. EPA's air quality modeling and analysis is designed to reflect what downwind air quality problems will exist in the relevant analytic year, and the assumptions used are based on realistic projections of source emissions.

In response to the commenters' contention that EPA should not model using the 0.1 lb/mmBtu emission rate assumption for EGUs because it is not enforceable and some units emit higher than this rate, this concern is addressed by the updates contained in the updated 2023 modeling used to derive EPA's 2021 air quality analysis for this final action. Specifically, as noted in the SNPRM, EPA is relying on updated Integrated Planning Model (IPM) modeling for its EGU projection in the updated analysis for this final action. Additionally, EPA has modeled a range of scenarios reflecting alternative EGU assumptions — each resulting in the same finding made in this action.¹¹

Although EPA disagrees with these comments regarding the modeling approach it took at the original proposal with respect to projecting EGU emissions,¹² the Agency made updates to

¹¹ *See* the Ozone Air Quality Assessment Tool (AQAT) spreadsheet and the Ozone Policy Analysis TSD located in the docket for this action for details about these scenarios, emissions, and air quality estimates.

¹² As explained further in this rule, the analysis supporting the December 30, 2019 proposal over-estimated EGU emissions.

incorporate the latest modeling and data, which address the concerns expressed by the commenters. The December 30, 2019 NPRM rule relied on air quality modeling analysis and data released in 2018 that showed results from analytic work completed in 2017 (prior to the completion of the first year of CSAPR Update compliance).¹³ As explained in the modeling TSD referenced in the July 19, 2021 SNPRM, EPA started with the latest historical data at that time (2016) and assumed that, on average, SCR-controlled coal units would operate at 0.1 lb/mmBtu if not already doing so (reflecting the fleet's response (on average) to the CSAPR Update that would begin in 2017).¹⁴ In this final action, EPA's future year air quality projections are informed by actual compliance data from 2019, which allows EPA to rely less on compliance assumptions and more on actual data from the past three years in evaluating likely EGU emissions in 2021. EPA estimated future year emissions using the January 2020 IPM Reference Case, which was informed by actual 2018 compliance rates rather than anticipated compliance rates (i.e., 2018 reported emission rates (not a 0.1 lb/mmBtu assumption)). This largely obviates the commenters' concern regarding the 0.1 lb/mmBtu assumption at proposal. Moreover, the IPM modeling explicitly includes the CSAPR Update enforceable limits (i.e., the states' trading allowance budgets) at both the regional and state level. With these enforceable limits included, the model allowed covered sources to emit up to those limits if it would be economically advantageous to do so, but this did not occur in the modeling.

EPA projected future 2021 and 2023 baseline EGU emissions using the version 6 — January 2020 reference case of the IPM.^{15,16} IPM, developed by ICF Consulting, is a state-of-the-art, peer-reviewed, multi-regional, dynamic, deterministic linear programming model of the contiguous U.S. electric power sector. It provides forecasts of least cost capacity expansion,

¹³ See March 2018 memorandum, located in the docket for this action.

¹⁴ Technical Support Document (TSD) Additional Updates to Emissions Inventories for the Version 6.3, 2011 Emissions Modeling Platform for the Year 2023, available at https://www.epa.gov/sites/production/files/2017-11/documents/2011v6.3_2023en_update_emismod_tsd_oct2017.pdf.

¹⁵ See <https://www.epa.gov/airmarkets/analysis-revised-cross-state-air-pollution-rule-update> (last accessed November 8, 2021).

¹⁶ The January 2020 IPM reference case is a later version than what was released with 2016v1.

electricity dispatch, and emission control strategies while meeting energy demand and environmental, transmission, dispatch, and reliability constraints. EPA has used IPM for over two decades to better understand power sector behavior under future business-as-usual conditions and to evaluate the economic and emission impacts of prospective environmental policies. The model is designed to reflect electricity markets as accurately as possible. EPA uses the best available information from utilities, industry experts, gas and coal market experts, financial institutions, and government statistics as the basis for the detailed power sector modeling in IPM. The model documentation provides additional information on the assumptions discussed here as well as all other model assumptions and inputs. The IPM version 6 — January 2020 reference base case accounts for updated federal and state environmental regulations, committed EGU retirements and new builds, and technology cost and performance assumptions as of late 2019. This projected base case accounts for the effects of the finalized Mercury and Air Toxics Standards rule, the CSAPR and the CSAPR Update, New Source Review settlements, final actions EPA has taken to implement the Regional Haze Rule, and other on-the-books federal and state rules through 2019 impacting sulfur dioxide, NO_x, directly emitted particulate matter, and CO₂. For the new 2023 air quality modeling used to interpolate air quality projections in 2021, EPA relied on these 2023 EGU emissions to inform the broader emissions inventory.

The EGU emissions data — both historical and projected — are shown in Table 1, and compared with the CSAPR Update enforceable budget, demonstrate: (1) the reasonableness of EPA’s practice of not solely using enforceable levels in deriving projections of actual conditions and contribution at steps 1 and 2 of the interstate-transport framework for ozone, and (2) the robustness of its examination.

Table 1: Reported Ozone Season NO_x Emissions from EGUs in the CSAPR Update

Region¹⁷

Reported Ozone Season NOx Emissions (tons)						IPM Projection (tons) ¹⁸	CSAPR Update Budget (enforceable tons)
2015	2016	2017	2018	2019	2020	2021	2021
398,831	371,994	294,483	289,988	251,763	227,325	222,900	313,626

In sum, EPA’s EGU assumptions show that its projected ozone-season EGU emissions levels from proposal of 283,164 tons in 2023 was, if anything, conservative — that is, it is likely that emissions levels from EGUs will be lower than what was projected in the proposal, not higher as suggested by the commenter. The 2019 ozone-season data reflected emissions that were already 20 percent below the CSAPR Update budgets, reflecting a 13 percent drop from the prior year, and at a pace of reduction that strongly suggests actual emissions from EGUs in 2021 will be well below the CSAPR Update budget levels. In other words, the emissions levels that the commenter claimed were not reasonable to expect in 2023 have already been achieved — four years ahead of that analytic year. The EGU projections EPA used in its analysis for 2021, as discussed previously, are reasonable and properly inform its analysis of ozone levels and contribution in that analytic year. In order for emissions in 2021 to rise to total budget levels (*e.g.*, 313,626 tons, representing the aggregate budgets for the covered states), a decade-long decline in ozone-season NOx emissions would have to not only cease but reverse sharply.

Supported by the most recent reported emissions data, EPA concludes that its EGU projections used in the most recent modeling and in the interpolation of that modeling to 2021 are reasonable and conservative. Thus, EPA believes it is reasonable and appropriate to rely on

¹⁷ This data analysis relies on 40 CFR part 75 emissions reporting data as available in EPA Air Markets Program Data available at <http://ampd.epa.gov/ampd/>.

¹⁸ These values are available in the Air Quality Modeling Base Case State Emissions file (fossil > 25 MW worksheet) available at <https://www.epa.gov/airmarkets/analysis-revised-cross-state-air-pollution-rule-update>. Additionally, as noted in the Revised CSAPR proposal, EPA’s earlier engineering analytics used a more conservative 283,164 tons for 2023. As a sensitivity analysis for the proposed Revised CSAPR Update Modeling using IPM, EPA also used an updated engineering analytics EGU estimate (relying on 2019 data) that resulted in a 2021 estimate of 238,798 tons.

these emissions projections in its air quality analysis for 2021 to approve the 2015 8-hour ozone transport SIP submissions for Florida, Georgia, North Carolina, and South Carolina.

Comment 3: A commenter states that EPA’s 2023 modeling described in the March 2018 memorandum is also flawed given the modeling’s reliance on certain federal emissions reduction programs, which the commenter argues EPA is “actively working to undermine.” For example, the commenter points to EPA’s proposed repeal of its rule regulating emissions from glider vehicles, glider engines, and glider kits, 82 FR 53442 (November 16, 2017) (Proposed Repeal of the Glider Rule), noting that EPA has estimated unregulated glider vehicles would increase emissions by approximately 300,000 tons annually in 2025. The commenter notes that even though EPA never finalized the Proposed Repeal of the Glider Rule, EPA’s enforcement office issued a memorandum on July 6, 2018, stating that it would not enforce the Glider Rule. The commenter states that although this “no action assurance” is being challenged in court and has been temporarily stayed, “EPA’s non-enforcement efforts underline the unreasonableness of relying on the emissions reductions from this rule as a basis for concluding that Marginal nonattainment areas will attain the 2015 NAAQS by 2021.” The commenter also asserts that EPA’s recent actions “weakening” the Corporate Average Fuel Economy (CAFE) standards for light-duty vehicles and EPA’s recent proposal to withdraw the Control Techniques Guidelines (CTGs) for the Oil and Natural Gas Industry call into question the accuracy of EPA’s 2023 modeling, and that “each deregulatory action . . . demonstrates the arbitrariness of EPA’s assumption that Marginal nonattainment areas will comply with the 2015 NAAQS by 2021 without additional ozone-precursor pollution reductions from southeastern upwind states.”

Response 3: As an initial matter, the updated 2023 modeling used to interpolate 2021 contributions that was relied on did not make different regulatory assumptions than the previous 2023 modeling released with the March 2018 memorandum regarding the Glider Rule and the light-duty CAFE standards, so the comment is relevant to the updated modeling as presented in the SNPRM. However, EPA disagrees that EPA’s updated air quality modeling did not properly

account for expected changes in projected emissions that would result from changes to federal programs. The mobile source and non-EGU emissions inventories in both the previous and updated modeling do not reflect changes in emissions resulting from rulemakings finalized in calendar year 2016 or later, nor do they reflect any rules proposed but not yet finalized since 2016, as only finalized rules are reflected in modeling inventories. This reflects EPA's normal practice to only include changes in emissions from final regulatory actions in its modeling because, until such rules are finalized, any potential changes in NO_x or VOC emissions are speculative.

EPA did not finalize the Proposed Repeal of the Glider Rule. EPA announced in the U.S. Office of Management and Budget's Spring 2020 Unified Agenda and Regulatory Plan that "EPA is no longer pursuing this action, and the emission standards and other requirements for heavy-duty glider vehicles, glider engines, and glider kits will remain in place as published in the 'Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles Phase 2' final rule on October 26, 2016 (81 FR 73478)."¹⁹ Additionally, EPA withdrew the conditional no action assurance for small manufacturers of glider vehicles in a memorandum dated July 26, 2018.²⁰

EPA did not finalize the proposed withdrawal of the CTGs for oil and natural gas sources. On March 9, 2018, for reasons explained in the *Federal Register* (83 FR 10478), EPA proposed to withdraw the 2016 CTG for the oil and natural gas industry. However, EPA did not finalize the proposal to withdraw the CTG. EPA announced in the U.S. Office of Management and Budget's Spring 2020 Unified Agenda and Regulatory Plan that "the CTG will remain in place as published on October 27, 2016 (81 FR 74798)."²¹

¹⁹ See also <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202004&RIN=2060-AT79> (last accessed October 10, 2021).

²⁰ See https://www.epa.gov/sites/production/files/2018-07/documents/memo_re_withdrawal_of_conditional_naa_regarding_small_manufacturers_of_glider_vehicles_07-26-2018.pdf (last accessed October 10, 2021).

²¹ See <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202004&RIN=2060-AT76> (last accessed October 10, 2021).

EPA and the National Highway Traffic Safety Administration have finalized the revisions to the greenhouse gas (GHG) and CAFE standards for light duty vehicles.²² However, that final action is not expected to have a meaningful impact on 2021 ozone-precursor emissions. Because the vehicles affected by the 2017–2025 GHG standards would still need to meet applicable criteria pollutant emissions standards (e.g., the Tier 3 emissions standards; *see* 79 FR 23414), the SAFE Vehicles Rule anticipated that any impacts of the SAFE Vehicles Rule on ozone precursor emissions “would most likely be far too small to observe.” *See* 85 FR 25041.

Comment 4: Two commenters disagree with EPA guidance that a 1 ppb contribution threshold is acceptable to determine whether an upwind contribution is significant, stating it is arbitrary and capricious. One commenter also asserts that allowing different states contributing to a collective problem to use different air quality threshold rates to avoid regulation is inequitable. The commenters refer to EPA’s August 31, 2018 memorandum from Peter Tsirigotis, titled “Analysis of Contribution Thresholds for Use in Clean Air Act Section 110(a)(2)(D)(i)(I) Interstate Transport State Implementation Plan Submissions for the 2015 Ozone National Ambient Air Quality Standards” (“August 2018 memorandum”),²³ and generally contend that the August 2018 memorandum provides an insufficient evaluation regarding the result of such approach on downwind states’ ability to attain and maintain the relevant NAAQS and shifts the responsibility for upwind pollution from upwind to downwind states.

Response 4: As the commenters correctly note, the August 2018 memorandum suggested that states could potentially justify the use of an alternative contribution threshold of 1 ppb with respect to the 2015 8-hour ozone NAAQS in step 2 of EPA’s four-step interstate framework under the Good Neighbor provision. However, EPA is not making a determination in this final action to approve a state’s use of an alternative 1 ppb threshold. Neither EPA’s NPRM,

²² “The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021–2026 Passenger Cars and Light Trucks,” 85 FR 24174 (April 30, 2020) (SAFE Vehicles Rule).

²³ Available at https://www.epa.gov/sites/production/files/2018-09/documents/contrib_thresholds_transport_sip_subm_2015_ozone_memo_08_31_18.pdf.

SNRPM, nor this final action rely on a 1 ppb threshold and are instead based on a finding that Florida, Georgia, North Carolina, and South Carolina will not contribute at or above one percent of the level of the NAAQS at any projected nonattainment or maintenance receptor based on EPA modeling. The use of the one percent threshold is consistent with all of EPA's ozone transport actions since the promulgation of the original CSAPR in 2011. For the 2015 8-hour ozone NAAQS, where the impacts of a state's emissions on all out of state receptors are below a one percent of the NAAQS threshold, no further analysis is required to determine that that state is not contributing to an out of state air quality problem under the Good Neighbor provision. Therefore, there is no need to evaluate any potential higher contribution threshold, as discussed in the August 2018 memorandum, in the present final action.

Comment 5: A commenter states that ozone exposure has significant health impacts, particularly for the respiratory system. The commenter cites the 2013 EPA Integrated Science Assessment for Ozone and Related Photochemical Oxidants (Final Report) and several other health studies in order to describe numerous health impacts associated with ozone exposure in detail.

Response 5: EPA agrees that ozone has a number of adverse health impacts. *See National Ambient Air Quality Standards for Ozone, Final Rule*, 80 FR 65292 (October 26, 2015).²⁴ EPA evaluates air quality criteria and impacts to public health and welfare as part of the comprehensive standard setting process. *Id.* EPA's final rule revising the primary and secondary ozone NAAQS includes a thorough explanation of human exposure and health risk assessments conducted in support of the Agency's review of evidence of ambient ozone exposures on human health effects, as well as detailed rationales for the Administrator's decisions on both standards. *See* 80 FR 65292.

The commenter does not explain how the information they provided regarding health

²⁴ *See also National Ambient Air Quality Standards for Ozone, Final Rule* for the 2008 NAAQS, 73 FR 16436 (March 27, 2008), 16440, 16450-51, 16470-71 & n.20.

impacts from ambient ozone exposure should influence EPA's action on the Florida, Georgia, North Carolina, and South Carolina Good Neighbor SIP submissions for the 2015 8-hour ozone NAAQS, and EPA considers such comments to be outside of the scope of this action. As stated previously, EPA's evaluation of air quality criteria and impacts to public health and welfare are part of the standard setting process, rather than a step completed through actions on individual SIP submissions that address Good Neighbor interstate transport infrastructure SIP requirements pursuant to CAA section 110(a)(2)(D)(i)(I). EPA's evaluation of individual SIP revisions is limited to determining whether the statutory criteria for implementation and attainment of the NAAQS and other CAA requirements, as applicable, have been satisfied. *See* CAA section 110(k)(2), (3).

Comment 6: EPA received one supportive set of comments on the December 30, 2019, NPRM. The comments support EPA's application of the 4-step process, and state that EPA correctly concluded that none of the states in EPA's December 30, 2019, NPRM contributed above 1 percent to downwind receptors. Commenters also expressed support for flexibility in addressing the Good Neighbor SIPs.

Response 6: EPA agrees with commenter that it appropriately applied steps 1 and 2 of the four-step interstate transport framework (which the commenter refers to as the 4-step process), and that, according to EPA's analysis, neither Florida, Georgia, North Carolina nor South Carolina contribute above one percent of the 2015 8-hour ozone NAAQS to any downwind state. With respect to the portion of the comment regarding retaining the ability for states to take different approaches to analyzing and addressing their Good Neighbor obligations, EPA's use of certain analytic methods in this action (such as the use of a one percent of NAAQS contribution threshold or the definition of nonattainment and maintenance receptors) does not in itself necessarily preclude different approaches to Good Neighbor analysis in other contexts, where EPA determines to be appropriate and consistent with legal requirements and governing case law.

III. Final Action

EPA is finalizing approval of revisions to the Florida, Georgia, North Carolina, and South Carolina SIPs. EPA finds that emissions from sources in Florida, Georgia, North Carolina, and South Carolina will not significantly contribute to nonattainment or interfere with maintenance of the 2015 8-hour ozone NAAQS in any other state. Thus, EPA is approving the interstate transport portions of the infrastructure SIP submissions from Florida, Georgia, North Carolina, and South Carolina, separately, as meeting CAA section 110(a)(2)(D)(i)(I) requirements for the 2015 8-hour ozone NAAQS.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. These actions merely approve state law as meeting Federal requirements and do not impose additional requirements beyond those imposed by state law. For that reason, these actions:

- Are not significant regulatory actions subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, for Florida, Georgia, and North Carolina, the Good Neighbor SIPs are not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

For South Carolina, because this final action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law, this action for the state of South Carolina does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). Therefore, this final action will not impose substantial direct costs on Tribal governments or preempt Tribal law. The Catawba Indian Nation Reservation is located within the boundary of York County, South Carolina. Pursuant to the Catawba Indian Claims Settlement Act, S.C. Code Ann. 27-16-120 (Settlement Act), “[a]ll state and local environmental laws and regulations apply to the [Catawba

Indian Nation and] Reservation and are fully enforceable by all relevant state and local agencies and authorities.” The Catawba Indian Nation also retains authority to impose regulations applying higher environmental standards to the Reservation than those imposed by state law or local governing bodies, in accordance with the Settlement Act.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days from date of publication of this document in the FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* CAA section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: November 26, 2021.

John Blevins,
Acting Regional Administrator,
Region 4.

For the reasons stated in the preamble, the Environmental Protection Agency amends 40 CFR part 52 as follows:

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart K – Florida

2. In § 52.520(e), amend the table by adding a new entry for “110(a)(1) and (2) Infrastructure Requirements for the 2015 8-Hour Ozone NAAQS” at the end of the table to read as follows:

§52.520 Identification of plan.

* * * *

(e) * * *

EPA-APPROVED FLORIDA NON-REGULATORY PROVISIONS

Provision	State effective date	EPA approval date	Federal Register notice	Explanation
**	**	*	*	*
110(a)(1) and (2) Infrastructure Requirements for the 2015 8-Hour Ozone NAAQS	9/18/2018	[Insert date of publication in FEDERAL REGISTER]	[Insert citation of publication]	Addressing Prongs 1 and 2 of section 110(a)(2)(D)(i)(I) only.

Subpart L – Georgia

3. In § 52.570(e) amend the table by adding a new entry for “110(a)(1) and (2) Infrastructure Requirements for the 2015 8-Hour Ozone NAAQS” at the end of the table to read as follows:

§52.570 Identification of plan.

* * * *

(e) * * *

EPA-APPROVED GEORGIA NON-REGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanation
**	**	*	*	*
110(a)(1) and (2) Infrastructure Requirements for the 2015 8-Hour Ozone NAAQS	Georgia	9/24/2018	[Insert date of publication in <u>FEDERAL REGISTER</u>], [Insert citation of publication]	Addressing Prongs 1 and 2 of section 110(a)(2)(D)(i)(I) only.

Subpart II – North Carolina

4. In § 52.1770(e), amend the table by adding a new entry for “110(a)(1) and (2) Infrastructure Requirements for the 2015 8-Hour Ozone NAAQS” at the end of the table to read as follows:

§52.1770 Identification of plan.

* * *

(e) * * *

EPA-APPROVED NORTH CAROLINA NON-REGULATORY PROVISIONS

Provision	State effective date	EPA approval date	Federal Register citation	Explanation
**	**	*	*	*
110(a)(1) and (2) Infrastructure Requirements for the 2015 8-Hour Ozone NAAQS	9/27/2018	[Insert date of publication in <u>FEDERAL REGISTER</u>]	[Insert citation of publication]	Addressing Prongs 1 and 2 of section 110(a)(2)(D)(i)(I) only.

Subpart PP – South Carolina

5. In § 52.2120(e), amend the table by adding a new entry for “110(a)(1) and (2) Infrastructure Requirements for the 2015 8-Hour Ozone NAAQS” at the end of the table to read as follows:

§52.2120 Identification of plan.

* * * * *

(e) * * *

Provision	State effective date	EPA approval date	Explanation
**	**	*	*
110(a)(1) and (2) Infrastructure Requirements for the 2015 8-Hour Ozone NAAQS	9/7/2018	[Insert date of publication in FEDERAL REGISTER], [Insert citation of publication]	Addressing Prongs 1 and 2 of section 110(a)(2)(D)(i)(I) only.

[FR Doc. 2021-26144 Filed: 12/1/2021 8:45 am; Publication Date: 12/2/2021]